

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Crl.MC.No. 3325 of 2007()

ST.2049/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

PETITIONER: ACCUSED NO.2

SOBHA PHILIP, PUTHENPURACKAL,
CHERANELLOOR, ERNAKULAM.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS:

1. REGHUNADHA KURUP, FOOD INSPECTOR,
EDAPPALLY CIRCLE.
2. DISTRICT FOOD INSPECTOR,
AND LOCAL (HEALTH) AUTHORITY, ERNAKULAM.
3. KAMARUDEEN, PANICKA VEETIL,
THIRUNELLOOR P.O., (VIA) POOVATHUR,
THRISSUR DT.
4. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1, 2 & 4 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 3325 of 2007

Dated this the 1st day of November, 2007

ORDER

This petition is filed by the petitioner, who is the second accused in a prosecution, under the provisions of the Prevention of Food Adulteration Act. The crux of the allegations against the petitioner, a woman, is that the first accused sold adulterated article to the Food Inspector from a premises, of which the petitioner is the licensee. Admittedly the petitioner is the licensee for the relevant period. The petitioner wants to set up a case that she has nothing to do with the licensed premises as she had entered into an agreement with the vendor (A1), who had sold the article to the Food Inspector. In as much as she had already entered into an agreement with the vendor prior to the date of sale in question, notwithstanding the fact that the licence continues to be in existence and valid, she may be saved of the

liability to face the prosecution by invoking the powers under Section 482 Cr.P.C. This in short is the plea raised.

2. I am afraid, the plea cannot be accepted at this stage. It is certainly for the petitioner to raise the defence in the trial that, though she continued to be the licensee on paper, she had actually no responsibility for the business conducted in the premises. At the stage of Section 482 Cr.P.C., it appears to be rather impossible for the court, to consider that disputed question of fact in detail and come to any conclusion in favour of the petitioner. The possibility of the vendor and the licensee subsequent to the sale, colluding and bringing into existence convenient documents cannot be lost sight of by the Court and in these circumstances acceptance of this defence at this stage even in a good case would certainly settle a bad precedent. I am of the view that the said plea cannot be accepted.

3. This Crl.M.C. is accordingly dismissed. I may hasten to observe that I have not chosen at all to express any opinion on the

merits of the contentions raised by the petitioner. It is for the petitioner to raise such contentions in the course of trial. I have chosen only to hold that the powers under Section 482 Cr.P.C. cannot and need not be invoked at this stage. The learned counsel for the petitioner submits that unnecessary insistence on personal presence of the petitioner, a woman, is likely to result in great hardship, prejudice and loss to the petitioner. I find no reason why the petitioner's personal presence must be rigidly insisted by the learned Magistrate on days when such presence is not essential for the progress of the case. The petitioner can apply for exemption and the learned Magistrate must consider such application on merits and pass appropriate orders.

(R. BASANT)
Judge

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